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Determining fundamental breach in international sale of goods:
Taming the Unruly Horse? (Article)

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Abstract

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The remedy of 'avoidance' under CISG is not available for every breach of contract, except for a fundamental one. Many commentators are of the view that the meaning of "fundamental breach" is vague and uncertain. The present paper analyses the dual elements of 'fundamental breach' on the basis of interpretative tools of the Convention, legislative history and an in-depth survey of judicial decisions from various countries. The paper finds that it is too drastic to say that the meaning of fundamental breach is vague but on the contrary the meaning can be refined through judicial interpretation. The paper concludes that though it will take time for case law to completely cover most situations of fundamental breach, it is clear at this stage that a number of basic principles for the determination of fundamental breach are well settled and established. © Universiti Putra Malaysia Press.

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- CISG Foreseeability Fundamental breach Remedy of avoidance Substantial detriment

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